*** THE HON'BLE MR JUSTICE B.SESHASAYANA REDDY**

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+ WRIT PETITION NO : 14394 of 2005

% 26-07-2005

Dr.V.V.Sai Naresh and another .. PETITIONERS

VS.

$ Union of India and others ..RESPONDENTS

! COUNSEL FOR PETITIONER: Sri.Nooty Rama Mohana Rao

^ COUNSEL FOR THE RESPONDENT No.1: Mr.Ratna Reddy, Assistant Solicitor General for Central Government.

COUNSEL FOR THE RESPONDENT NOS.2 to 3: G.P. for Health, Medical and Family Welfare.

COUNSEL FOR THE RESPONDENT NO.4: Sri.Nagarjuna Babu, Standing Counsel for N.T.R.University of Health Sciences, Vijayawada.

COUNSEL FOR THE RESPONDENT NO. 5 and 6: Smt.Y.Padmavathi.

COUNSEL FOR THE RESPONDENT NOS.7 & 8: Sri.D.Prakash Reddy.

< Gist:

> Head Note:

? CITATIONS:

1. 2002 SCC (7) 258
2. AIR 1991 AP 1
3. AIR 1989 SC 1642
4. 1988(2) ALT 463

THE HONOURABLE SRI JUSTICE

B.SESHASAYANA REDDY

W.P.NO.14394 of 2005

O R D E R :

1. For the academic year 2005-2006, entrance examination for Super Speciality (2nd Post Graduate) Courses was held on 29-5-2005 by the University of Health Sciences, which was constituted under the Andhra Pradesh University of Health Sciences Act, 1986. In the notification issued by the University of Health Sciences, the conditions for admission to the super speciality (Second PG) Courses in the medical colleges for the said academic year were laid down; the seats in each of the super speciality were also specified along with the college or institute where they are available. Prospectus for admission to Super Speciality (2nd PG) Courses indicated the seats available under non-state wide and the seats available under the State Wide. Dr.J.A.L.Ranganath-petitioner No.1 did his MBBS (1st degree) from Adichunchanagiri Institute of Medical Sciences (AIMS) Bellur, University of Mysore, Karnataka and MD (General Medicine) from Kasturiba Medical College (KMC) Mangalore, Karnataka state. Dr. Y. Pavan Kumar Reddy- Petitioner No.2 did his M.B.B.S. (1st decree) and M.D(General Medicine) from Kurnool Medical College. Both the petitioners took entrance examination for Super Speciality (2nd P G) Courses. The 1st petitioner secured 2nd rank over all for admission to D.M. (Nephrology) Course and the 2nd petitioner secured 5th rank over all and 1st rank amongst Sri.Venkateswara University Local candidates for admission to D.M. (Gastroenterology) Course. In D.M. (Nephrology) Course, there are three seats available, one each in Osmania Medical College, Gandhi Medical College and Andhra Medical College respectively. As per the notification, seats available at Gadhi Medical College and Andhra Medical College are indicated as non-State wide seats. For DM. (Gastroentrology) course, 4 seats are available and two of them are provided in Osmania Medical College and one each in Gandhi Medical College and Andhra Medical College. The seats available in D.M. (Gastroentrology) course in Gandhi Medical College are shown as non-state wide seats. For D.M. (Gastroentrology) course, 1st and 2nd and 4th ranks have been secured by the candidates belonging to the Osmania University local area. The 3rd rank has been secured by the candidate belonging to Andhra University local area. The Government of Andhra Pradesh exercising the power under Section 3 read with

Section 15(1) of Andhra Pradesh Educational Institutions/Regulations of Admissions and Prohibition of Capitation fee Act, 1983 (AP Act,1983) amended the admission rules to the Super speciality Courses in the Medical Colleges. The amendment was notified on 28-7-2003. The same was got published through G.O.Ms. No.409 Health, Medical and Family welfare (E2 Department dated 24-7-2003). Through this amendment, sub-rule 1 is added to Rule 3 of Andhra Pradesh Regulation of Admission to Super Specialties in the Medical College Rules, 1983 and it reads as follows:

"3(1) As super specialty courses are having scarce seats and are unevenly disturbed, all the super Specialty Courses in this State are treated as State-Wide Courses until further orders."

2. The State Government has taken up the issue relating to the inclusion of the newly sanctioned Super Specialty courses in the schedule to the Presidential Order. The Government of India rejected the proposal of the State Government and communicated the same on 27-6-2005. The decision conveyed by the Government of India, Ministry of Home affairs to the Additional Secretary to Government Health Medical and Family Welfare Department, Andhra Pradesh Secretariat, Hyderabad read as follows:

"I am directed to refer to your letter Nos.69822/SPF A3/2004-3 dated 8-6-2004, 10-11-2004 and No.13869/E2/2003-17 dated 9-6-2005 on the subject mentioned above and to say that the proposal of the State Government cannot be acceded to as according to available information at present the total number of seats available in the State in the Super Speciality Courses proposed, do not exceed three provisions of paragraph 6(1) and (2) of the Andhra Pradesh Public Employment Andhra Pradesh Educational Institutions (Regulation of Admissions) Order 1974, therefore, cannot be applied in respect of the above proposal."

3. The petitioners have filed the writ petition assailing the action of the NTR University of Health and Medical Sciences Vijawada-4th respondent in notifying 9 seats as non-State wide seats and also the action of the Union of India in rejecting the proposals of the State Government for inclusion of these Super Specialty

Courses as State Wide Courses in the schedule to Presidential Order.

4. To complete the narration of facts, the reliefs claimed by the petitioners in the writ petition need to be noted and they are:

a. Declare the decision and order communicated by the 1st respondent herein through its File No.21013/3/2004-SR, dated 27-06-2005 as unconstitutional;

b. Consequently, direct the respondents to treat and consider all the seats of Super-specialty courses available in the various Medical Institutions in the State of A.P. as “State-wide Courses” and regulate admission process thereof accordingly;

c. Declare that the 4th respondent is bound by the rules and amendments carried out by the Governor of A.P. through the admission to Super-speciality in Medical Colleges Rules, 1983 and in particular, the amendment brought about and notified through G.O.Ms.No.409, Health, Medical and Family Welfare Department (E-2) Department, dated 24-07-2003 and accordingly, regulate the admission process into Super specialty Courses for the academic year 2005-06;

d. Direct the 1st respondent to fix the responsibility and accountability for the inordinate delay in processing the file initiated pursuant to the proposal submitted by the State of A.P. in their letter No.69822/SPF/A3/2004, dated 08-06-2004 and communicate the action taken to this Hon’ble Court;

e. Direct the 2nd respondent to hold the NTR University of Health Sciences, Vijayawada as responsible and accountable for the breach of the rules committed by it in particular, by not notifying the amended rule brought about through G.O.Ms.No.409, dated 24/07/2003 while issuing the prospectus relating to admission process for the academic year 2005-06 and place on record the action taken against the officials of the 4th respondent University

in this regard and pass such order or further orders as are deemed fit and proper in the circumstances of the case."

5. The 4th respondent-University filed counter affidavit. It is stated in para 7 of the counter affidavit that the prospectus issued by the University is directly in consonance with the Presidential order, the rules framed by the State Government and orders of this Court in W.P.No.15594 of 2003 and W.P.No.10375 of 2004. I deem it appropriate to refer paragraphs 7 and 8 of the counter affidavit of 4th respondent-University and they are thus:

" 7. In reply to para-10, I submit that the prospectus issued by the University is directly in consonance with the Presidential Order, the Rules framed by the State Government and orders of this Honorable Court mentioned above. It is incorrect on the part of the petitioners to state that the University had ignored the amendment brought in by the State Government. In the preceding paragraphs, it is explained as to why the University is obligated to treat the enhanced seats as non-state-wide seats. Further in the writ affidavit it is mentioned that the University has announced 16 seats out 32 seats as non-state-wide seats, which is factually incorrect as could be seen from the notification of the University, out of 32 seats in various super specialty courses, 9 seats are treated as non-state-wide seats due to the reasons set forth in preceding paragraphs. It is true that the University received the representation from the 1st petitioner, but in view of the pendency of the proposal sent by the State Government to the Central Government for inclusion of enhanced seats in the scheduled to the Presidential Order, the University had no choice to take any decision in the matter and it is incompetent to do so.

8. In reply to para-11, I submit that all the arguments made in this paragraph pertains to the State Government's proposal and the rejection of the said proposal by the Central Government and this respondent has no comments on the said averments."

6. Respondents 5 and 6 came on record as per the orders in WPMP.No.19074 of 2005. The 5th respondent claims that he secured 7th rank in over all and first rank in amongst Andhra University local area candidates for a seat in DN(Nephrology). 6th respondent claims that he secured 3rd rank in over all and first rank in amongst

Andhra University local area candidates for a seat in DM(Neurology). Respondents 7 and 8 came on record as per the orders in WPMP.No.20073 of 2005. 7th respondent claims that he secured fourth rank for a seat in DM(Gastroentrology). 8th respondent claims that he secured fourth rank in over all and first rank amongst Andhra University area for seats in DM(Endocrinology). The counters of respondents 5 to 8 is almost similar to the counter affidavit filed by 4th respondent-University.

7. Heard Sri.Nuty Rammohan Rao, learned counsel appearing for the petitioners, Sri.D.Prakash Reddy, learned senior counsel appearing for respondents 7 and 8, Smt.Y.Padmavathi, learned counsel appearing for respondents 5 and 6, Sri.Nagarjuna Babu, learned Standing Counsel appearing for 4th respondent-University and Mr.Ratna Reddy, Assistant Solicitor General appearing for 1st respondent-Union of India.

8. Learned counsel appearing for the petitioners submits that issuing notification by the 4th respondent-University treating nine seats as non-state-wide seats is contrary to the Government G.O.Ms.No.409, dated 24.7.2003. He further submits that the State Government has rightly pointed out in its letter dated 8.6.2004 that the super-specialty courses are very scarce and unevenly distributed among all the three regions in the State and requested the Government of India to treat the Additional super-specialty courses in the State as state-wide-courses. In elaborating his arguments he refers to the provisions of Presidential Order, A.P. Educational Institutions/Regulations of Admissions and Prohibition of Capitation Fee Act, 1983 and Andhra Pradesh (Regulation) Admission to Super-Speciality courses in Medical Colleges rules, 1983. His further submission is that rejection of the proposal of the State Government by the Ministry of Home Affairs is the result of total non-application and abdication of mind to the issue on hand. He refers the total number of seats available in M.Ch. (Genito Unrinary Surgery), MCh. (Neuro Surgery), M.Ch. (Paediatric Surgery) and DM(Gastroenterology) to convince the court that the reason mentioned for rejection of the proposal by Government of India is apparently

unsustainable. He would further contend that the petitioners by letter dated 6.5.2005 brought to the notice of 4th respondent University about the G.O.Ms.No.409 whereunder 9 additional seats in superspecialty courses as state-wide courses but the 4th respondent-University did not choose to correct itself and not even replied to the petitioners.

9. Sri.Ratna Reddy, learned Assistant Solicitor General appearing for 1st respondent-Government of India on the basis of instructions received by fax from the Ministry of Home Affairs, Government of India, submits that the total number of seats available in the State in each of the Super Speciality courses, except in one course mentioned in the proposal of the State Government of Andhra Pradesh does not exceed three and therefore the Government of India is justified in rejecting the proposal.

10. Sri.D.Prakash Reddy, learned Senior Counsel appearing for respondents 7 and 8 submits that 4th respondent-university is justified in issuing notification indicating 9 seats as non-state-wide seats in view of the fact that the proposal sent by the Government for inclusion of the new seats in the schedule to the Presidential Order is not acceded. He also submits that the additional seats granted under various government orders are to be treated as non-state-wide seats since they are not included in the schedule to the Presidential Order.

11. Learned Standing Counsel appearing for 4th respondent-University submits that 4th respondent-University is justified in issuing notification treating 9 seats as non-state-wide seats in view of the orders passed by this court in W.P.No.15594 of 2003 and W.P.No.10375 of 2004 and also because of non-inclusion of those seats in the schedule to the Presidential Order.

12. Smt.Y.Padmavathi, learned counsel appearing for respondents 5 and 6 submits that the schedule fixed by the University cannot be interdicted in view of the decision

of the Supreme Court in MEDICAL COUNCIL OF INDIA v. MADHU SINGH. She would further contend that if the admissions are not completed as per the schedule there is every possibility of the students losing the academic year.

13. Before dwelling on the rival contentions of the parties, it would be useful to remind us of the historical background in which Article 371 D came to be inserted in the Constitution and the presidential order came to be made. The Erstwhile State of Hyderabad comprised of three linguistic regions called Telangana, Maratwada and Karnataka. After re-organisation of the States in 1956, the Martwada region formed part of Maharashtra State; the Karnataka region formed part of Karnatka State and the Telangana region became part of the State of Andhra Pradesh. At the time of formation of Andhra Pradesh, certain safeguards were envisaged for the Telengana area in the matter of development and in the matter of employment opportunities and the educational facilities. Various steps taken to give effect to the assurances and the safeguards could not yield the desired results; on the contrary they gave cause for dissatisfaction sometimes in Telangana area and some times in the other areas of the State, which led to public agitations and disruption of normal life in the State. The leaders of the Andhra Pradesh State made concerted efforts to analyse the factors giving rise to the dissatisfaction and evolved a formula with a view to achieving fuller emotional integration of the people of Andhra Pradesh; for promoting accelerated development of the backward areas of the State and for providing equitable opportunities to different areas of the State in the matter of education, employment and career prospects in public services. This formula is commonly known as six point formula. To give effect to this formula, a Bill was introduced in the Parliament for enacting the Constitution (32nd Amendment) Act, 1972. By this Act, Articles 371 D and 371 E were inserted in part XXI of the Constitution.

14. Clause (1) of Article 371 D empowers the President to make an order and having regard to the requirements of the State as a whole, to provide equitable opportunities and facilities for the people belonging to different parts of the State in the matter of public employment and in the matter of education. It is, inter alia, particularised in Clause 2 thereof that the President may specify in his order any part or parts of the State which shall be regarded as the local area for the purpose of admission to any

University within the State or to any other educational institution which is subject to the control of the State Government and also specify the extent to which, the manner in which and the conditions subject to which, preference or reservation shall be given or made to or in favour of candidates who have resided or studied for any period specified in the order in the local area in respect of such University or educational institution, in the matter of admission to any such University or other educational institution. In exercise of power conferred under clauses 1 and 2 of the Article 371 D, the President issued The Andhra Pradesh Educational Institutions (Regulation of Admissions) Order, 1974 (referred to as the 'Presidential Order') on July 3, 1974 which came into force from July 1,1974. Paragraph 2 of the Presidential Order defines the expressions used therein. Paragraph 3 specifies the local area for purposes of admission to the Universities and the educational institutions other than State-wide University or state-wide educational institution. The State is divided into three local areas for the purpose of admission to various courses offered in the Universities or other educational institutions subject to the control of the State Government. They are : (1) Andhra University local area; (2) Osmania University local area; and (3) Sri Venkateswara University local area. The Universities and the educational institutions subject to the control of the State Government are divided into two categories, viz., (1) State-wide Universities and educational institutions and (2) non-State-wide Universities and educational institutions. The expression 'local candidates' is defined for purposes of admission to any course of study in relation to a local area in para 4. Paras 5 and 6 of the Presidential Order deal with reservation of seats for local candidates in non-State-wide Universities and educational institutions and State-wide Universities and educational institutions respectively. The expression 'State-wide University' is defined in para 2 (f) of the Order and the expression 'State-wide educational institution' is defined in para 2(e) and such institutions are specified in the schedule to the Presidential Order. The paragraph 8 empowers the President to require the State Government to issue directions. Overriding effect is given to the provisions of the Presidential Order over any statute, ordinance, rule or regulation in respect of admissions to any University or to any other educational institutions which are subject to control of the State Government by paragraph 9. Paragraph 10 declares that the provisions of the Presidential Order shall not affect the operation of reservations in favour of women, socially and educationally backward classes, etc., and scheduled castes and scheduled tribes insofar as they are not inconsistent with the Order. The following schools/courses"

(a) primary or secondary school, (b) correspondence courses provided by any other University or other educational institution and (c) part-time courses of study provided by any other University or other educational institutions for the benefit of the employed persons, are excluded from the operation of the Presidential Order by paragraph 11.

15. The Presidential Order as has been noticed above divided the State into three local areas; and the Universities and Educational institutions subject to the control of the State Government into two categories, State-wide Universities and Educational institutions and non-State-wide Universities and educational institutions. In regard to the non-State-wide Universities and Educational universities subject to the control of the State Government, paragraphs 5 of the presidential order, reserves 85% of the seats in each local area for the local candidates and sets apart 15% as unreserved. In regard to the State-wide Universities and the Educational institutions subject to the control of the State Government, which have been specified in schedule-II of the Order, 85% of the available sets in such universities or educational institutions, are reserved in favour of the local candidates of each of the local areas at the ratio of 42:36:22 respectively.

16. The question whether the Presidential Order is violative of Article 371 D of the Constitution fell for consideration before the Division Bench of this Court in B.RAMESH V. UNIVERSITY OF HEALTH SCIENCES, VIJAYAWADA.. The Bench negatived the contention that the Presidential Order is violative of Article 371 D.

> Article 371 D (1) of the Constitution reads as follows:
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> "The provision of the Article under any order of the President thereunder shall have the effect not withstanding anything other than the provision of this Constitution or any other law for the time being in force."

It is explicit from the above referred clause that the provisions of Article 371 D and the Presidential Order are insulated from the attack or challenge based on any other provisions of the Constitution or any other law for the time being in force. Paragraph 9 of the Presidential Order also gives overriding effect to the provisions of the Order

over any Statute-cum-Ordinance, rule regulation or any other order in respect of the admission into any university or any educational institutions subject to the control of the State Government.

17. The Government of A.P. has issued “Andhra Pradesh (Regulation of Admissions to Super Speciality Courses in the Medical Colleges) Rules, 1983 contained in G.O.Ms.no.740 dated 22-11-1983. They are statutory rules issued under section 15 of the A.P. Educational Institutions (Regulation of Admissions and Prohibition of capitation fees), Act 1983.

18. The Government of Andhra Pradesh by G.O.Ms.No.3 Medical and health Medical Department dated 6-1-2003, G.O.Ms.No.10 Health Medical and Family Department dated 22-1-2003, G.O.Ms.No.125 Health and Medical Family Welfare Department dated 22-4-2003 and G.O.Ms.No.232, Health, Medical and Family Welfare (E2) Department dated 31.7.2004 sanctioned 9 seats in various super specialty courses.

19. The 4th respondent N.T.R. University Health Sciences issued notification on 25-04-2005 for admission to Super Specialty Courses for the academic year 2005-2006. The notification relates to 32 seats. Among them, 23 are indicated as statewide seats and 9 are indicated as non-state-wide seats.

20. When the Government of Andhra Pradesh issued G.O.Ms.No.409 Health, Medical and Family Welfare (E-2) Department on 24-7-2003 by adding Rule 3(1) to the rules, two writ petitions came to be filed. The Writ Petition No.15594 of 2003 was filed by Dr.A.Kavitha and Dr.K.Ravishankar assailing G.O.Ms.No.409, Health, Medical and Family Welfare (E-2) Department dated 24-7-2003. The said writ petition came to be allowed on 5-9-2003. It is observed in the said writ petition as follows:

“ It is clear from the above aspect and also the fact that all the 23 seats, which were filled up on 10-07-2003, belong to the Statewide seats

and the rest being not included in the said Schedule, shall have to be treated as Non-Statewide seats."

21. The writ petition No.10375 of 2004 came to be filed by Dr. B.Gowri Shankar and two others questioning the action of the N.T.R. University of Health Sciences in notifying 8 seats in various Super Specialty Courses as non-state-wide seats for the academic year 2004-2005. The said writ petition is ended in dismissal on 28-7-2004. It is observed in the said writ petition that since the Central Government has not approved the proposed amendment to the presidential Order with regard to 8 super specialty seats, the University has no option except to fill the said seats treating them as non-Statewide. I deem it appropriate to refer the relevant portion of the order passed in the said writ petition and it is thus:

" The learned Counsel for the petitioner contends that the counseling for the above seats was held on 23-7-2004 and only the 1st petitioner, who obtained first rank in the state wide is entitled to admission into D.M.(Endocrinology) treated one seat as State wide. The other petitioners are not successful and he is not claiming for any relief on their behalf except one seat above.

On the other hand, the learned the learned Government pleader for M and H and also University Standing Counsel for N.T.R. University contends that unless & until the Presidential Order is suitably and strictly amended, including 8 Super Specialty seats as State-wide seats does not arise, University has no option except to admit the students treated them as non state-wide seats.

Admittedly, in the present case, the State Government has already addressed a letter to the Central Government. Meanwhile it could not obtain the necessary orders but failed in its attempt to get the Presidential Orders suitably amended. In view of the same, since limited seats are available, University cannot wait till the Presidential Order is suitably amended, and they have to finalize the admission within the time schedule prescribed by the Medical Counsel of India.

In view of the same, the University has no option except to fill the said seats treating them as non-state-wide, and the impugned notification issued by the University did not suffer from any infirmity nor can be treated as arbitrary or illegal in filling the seats as non state-wide seats."

It is crystal clear from the orders passed in the above-referred two writ petitions that the additional seats not covered by the schedule to the Presidential Order are required to be treated as non state-wide seats till they are included in the schedule to the Presidential Order.

22. It is no more in dispute that out of the seats notified, 23 are State-wide seats and 9 are non state-wide seats. The issue whether G.O.Ms.No.409 is to be given effect pending inclusion of nine additional seats in the schedule to the Presidential order is no more resintegra since it has been held in the earlier writ petitions that unless schedule to the Presidential Order is suitably amended the said government order cannot be given effect to. The University cannot be found fault in issuing notification treating the nine seats as non-state-wide seats in view of the earlier orders passed by this court in W.P.No.15594 of 2003 and W.P.No.10375 of 2004. The only issue survives is whether the rejection of the proposal of the State Government to treat the additional seats as state-wide seats has been examined by the Central Government in a way it is expected to do or rejection of the proposal is apparently unsustainable.

23. Every State action must be reasonable and in public interest and infraction of that duty is amenable to judicial review. The extent of permissible judicial review was indicated by saying that the actions are amenable to judicial review only to the extent that the State must act validly or a discernible reason, not whimsically for any ulterior purpose. There is a presumption of validity of State action and the burden is on the person who alleges violation of Art.14 to prove the assertion. However, where no plausible reason or principle is indicated nor is it discernible and the impugned State action, therefore, appears to be ex facie arbitrary. The initial burden to prove the arbitrariness is discharged shifting onus on the State to justify its action as fair and reasonable. If the State is unable to produce material to justify its action as fair and reasonable, the burden on the person alleging arbitrariness must be held to be discharged. The scope of judicial review is limited as indicated in DWARAKADAS MARFATIA's case to oversee the State action for the purpose of satisfying that it is not vitiated by the vice of arbitrariness and no more. The wisdom of the policy or the lack of it or the desirability of a better alternative is not within the permissible scope of judicial review in such cases. It is not for the courts to recast the policy or to

substitute it with another which is considered to be more appropriate, once the attack on the ground of arbitrariness is successfully repelled by showing that the act which was done, was fair and reasonable in the facts and circumstances of the case. It is well settled that every State action, in order to survive, must not be susceptible to the vice of arbitrariness which is the crux of Art.14 of the Constitution and basic to the rule of law, the system which governs us. Arbitrariness is the very negation of the rule of law. Satisfaction of this basic test in every State action is sine qua non to its validity. The question whether the impugned act is arbitrary or not, is ultimately to be answered on the facts and circumstances of a given case. An obvious test to apply is to see whether there is any discernible principle emerging from the impugned act and if so does it satisfy the test of reasonableness. Every State action must be informed by reason and it follows that an act uninformed by reason is arbitrary. Rule of Law contemplates governance by laws and not by humour, whimsical or capricious of the men to whom the governance is entrusted for the time being. It is trite that 'be you ever so high, the laws are above you.' This is what men in power must remember always. It has been emphasized time and again that arbitrariness is anathema the State action in every sphere and wherever the vice percolates, this Court would not be impeded by technicalities to trace it and strike it down. This is the surest way to ensure the majesty of rule of law guaranteed by the Constitution of India. Conferment of the power together with the discretion which goes with it to enable the process of exercise of power is coupled with the duty to shun arbitrariness in its exercise and promote the object for which the power is confirmed which undoubtedly is public interest and not individual or private gain, whim or caprice of any individual. All persons entrusted with any such power have to bear in mind its necessary concomitant which alone justifies conferment of power under the rule of law.

24. At this juncture I deem it appropriate to refer the seats available in various super-specialty courses prior to enhancement of 9 seats under various government orders referred to para 17 of this judgment.

S.NO.	Course	EligibleQualifications	Seats availableIn OMC, Hyd.	Seats AvailableIn GMC, Hyd.	Seats Available in AMC, Vsp.
1.	M.Ch.(Genito Urinary Surgery)	MS(G.S)	2	1	1
2.	M.Ch (Neuro Surgery)	MS(G.S)	2	1	1
3.	M.Ch (Plastic Surgery)	MS(G.S)	2		
4.	M.Ch (Paediatric Surgery)	MS (G.S)	2	1	1
5.	M.Ch. (CTS)	MS (G.S)	1	1	
6.	DM(Cardiology)	MD(G.M or Paediatrics)	1	1	1
7.	DM (Gastroentrology)	MD (G.M. or Paediatrics)	2		
8.	DM (Neurology)	MD (G.M or Paediatrics)	1		
9.	DM(Nephrology)	MD(G.M. or Paediatrics)	1		

The above seats are state-wide seats. As per para 6 of the Presidential Order 85 % of the available seats in state-wide Universities and state-wide educational institutions shall be reserved in favour of local candidates in relation to the local areas specified in sub-para (1). For clarity I may extract para 6 of the Presidential Order and it reads as follows:

> " Para 6: Reservation of Sate-wide Universities and State-wide educational institutions:
>
> (1) Admissions to eighty-five percent of the available seats in every course of study provided by a State-wide University or State-wide educational institution shall be reserved in favour of, allocated among the local candidates in relation to the local areas specified in sub-paragraph 91), sub-paragraph (2) and sub-paragraph (3) of paragraph 3, in the ratio of 42:36:22 respectively. (Vide G.O.Ms.No.816 G.A. SPE-B) dated 26-1-1976 and G.S.R. 898-(e), dated 25th November, 1976, Government of India).
>
> Provided that this sub-paragraph shall not apply in relation to any course of study in which the total number of available seats does not exceed three.

(2) While determining under sub-paragraph (1), the number of seats to be reserved in favour of the local candidates, any fraction of a seat shall be counted as one:

Provided that there shall be at least one unreserved seat.

(3) While allocating under sub-paragraph (1) the reserved seats among the local candidates in relation to different local areas, fractions of a seat shall be adjusted by counting the greatest fractions as one and if, necessary, also the greater of the remaining fractions as another; and where the fraction to be so counted cannot be selected by reason of the fractions being equal, the selection shall be by lot:-

Provided that there shall be at least one seat allocated for the local candidates in respect of each local area."

It is clear from the above referred chart that 14 seats are in Osmania Medical College, 5 seats are in Gandhi Medical College and 4 seats are in Andhra Medical College. The first two colleges are in telangana area and the last one is in Andhra area. At this juncture, it is trite to refer the decision of a Division Bench of this court in DR.K.ASHOK KUMAR V. UNIVERSITY OF HEALTH SCIENCES AND OTHERS wherein it is observed that where in a particular super specialty course only one seat is available in the entire State i.e. in all the three local areas put together, it would be appropriate to declare such department in that particular college as state-wide education in statutes, as has already been done in respect of certain departments. Further observation of the Division Bench is:

" We have referred herein before to the fact that 'Dental-Nero Surgery, Public Health, Radio Diagnosis and Radio Therapy Departments' in Osmania Medical College, Hyderabad, were declared as state-wide educational institutions. It is not known as to why the Neurology Department was not similarly declared. The authorities may consider whether such a course should not be adopted even in respect of neurology department for the future years and if satisfied, take steps towards amendment of the schedule to the Presidential Order."

25. The Government of Andhra Pradesh under various government orders created new seats/departments in three educational institutions. The newly created seats in the department/educational institutions are as follows:

S.No.	Course	Eligible Qualifications	Seats availableIn OMC, Hyd	Seats Available In GMC,Hyd	Seats Available in AMC, Vsp.
1.	M.Ch. Plastic Surgery)	MS (G.S)		1	
2.	DM (Gastroent erology)	MD (G.M. or Paediatrics)		1	1
3.	DM (Neurology)	MD(G.M or Paediatrics)			1
4.	DM (Nephrology)	MD (G.M or Paediatrics)		1	1
5.	DM (Endocrinology	MD (GM or Paediatrics or Biochemistry)	1		1
6.	DM (Clinical Pharmacology)	MD (Pharmacology)	1		

The above chart indicates that two seats are in Osmania Medical College, 3 seats are in Gandhi Medical College and 4 seats are in Andhra Medical College. The newly created seats are not included in the schedule to the Presidential Order. The State Government issued G.O.Ms.No.409 treating the newly sanctioned super-specialty courses as state-wide courses. The reason offered is “scarce seats and their uneven distribution”. As I indicated above the first two colleges are in Telangana region and the third one is located in Andhra region. Since they are not included in the schedule to the Presidential Order admission to those courses is governed by para 5 of the Presidential Order. I think it appropriate to refer para 5 of the Presidential Order, which reads as under:

> “ PARA 5: Reservation in non-Statewide Universities and educational institutions:
>
> (1) Admission to eighty five percent of the available seats in every course of study provided by the Andhra University, the Nagarjuna University, the Osmania University, the Kakatiya University or Sri Venkateswara University or by any educational institution (other than a State-wide University or a State-wide educational institution) which is subject to the control of the State Government, shall be reserved in favour of the local candidates in relation to the local area in respect of such University or other educational institution.

(2) While determining under sub-paragraph (1) the number of seats to be reserved in favour of local candidates any fraction of a seat shall be counted as one:

Provided that there shall be at least one unreserved seat."

26. By looking at the chart indicated above with regard to the newly created courses/seats, there cannot be any difficulty to say that five seats are in Telangana area and four seats in Andhra area. The reason offered by the State Government to treat the above seats as statewide seats is because of the uneven distribution. Can it be said looking at the chart indicated above that newly created seats are unevenly distributed. In my considered view, the answer could be, certainly, in the negative. The Central Government taking into consideration of the number of seats available in the State in super-specialty proposed (emphasis is mine) rejected the proposal. The communication sent by Government of India to the State Government reads as follows:

" I am directed to refer to your letter nos.69822/SPFA3/ 2004-3, dated 8.6.2004, 10-11-2004 and No.13869/E2/2003-17, dated 9.6.2005 on the subject mentioned above and to say that the proposal of the State Government cannot be acceded to as according to available information at present the total number of seats available in the State in the Super Speciality Courses proposed, do not exceed three. Provisions of paragraph 6(1) and (2) of the Andhra Pradesh Public Employment Andhra Pradesh Educational Institutions (Regulation of Admissions) Order, 1974, therefore, cannot be applied in respect of the above proposal."

Admittedly, the proposed seats in any of the super-specialty courses do not exceed three. Therefore, the attack of the petitioners that the rejection of the proposal sent by the Government is arbitrary has no basis. Before parting with the case, I may make it clear that any observations made in this Writ Petition will not come in the way of State Government in reiterating its proposal for treating the additional seats sanctioned in various Government Orders referred to above as state-wide seats by substantiating the reasons and furnishing better particulars, if any.

27. In the result, I find that this writ petition is devoid of merits and the same is hereby dismissed. No costs.

Dated: 26-07-2005. (B.Seshasayana Reddy, J)

tnb

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